

IN THE MATTER OF:

THE BROOKLYN UNION GAS COMPANY
One MetroTech Center
Brooklyn, N.Y. 11201

Current EPA Identification Numbers
as of the Date of Complaint
Issuance:

Greenpoint Energy Facility
NYD006978795

Clifton Gas Station
NYD980532071

Canarsie Service Station
NYD987040615

Newtown Holder Service Station
NYD987040623

Citizens Gate Service Station
NYD987040631

Proceeding Under Section 3008
of the Resource Conservation
and Recovery Act, 42 U.S.C. § 6928

ANSWER OF THE BROOKLYN
UNION GAS COMPANY AND
REQUEST FOR HEARING

Docket Nos. II RCRA-93-021
(A-E)

INTRODUCTION

1. Paragraph 1 sets forth legal conclusions which do not require a response.

2. Paragraph 2 sets forth legal conclusions which do not require a response. Respondent explains that due to the federal authorization of the New York hazardous waste program, any exemptions created by the New York regulations apply to alleged violations of any federal regulations (to the extent any such regulations are applicable, which Respondent denies). All responses hereinafter shall incorporate this explanation.

3. Respondent lacks knowledge as to the allegation set forth in Paragraph 3.

4. Respondent lacks knowledge as to the allegations in Paragraph 4, except admits that inspections of certain of its facilities were conducted on or about February 22, June 25, and June 28, 1993 by representatives of EPA, that it sent a letter to

EPA on March 18, 1993 regarding its waste management procedures at several of its facilities, and that it provided a written response dated August 10, 1993 fully responding to an Information Request letter issued by EPA on or about June 29, 1993.

5. Respondent denies the allegations in Paragraph 5 except as may be specifically admitted herein.

GENERAL ALLEGATIONS

6. Respondent admits the allegation in paragraph 6.

7. Respondent admits the allegation in paragraph 7.

8. Paragraph 8 sets forth legal conclusions which do not require a response. Respondent denies that it was required to notify EPA or the State as a transporter of hazardous waste or as the owner or operator of a facility for the treatment, storage, or disposal of hazardous waste or as a generator of hazardous waste for any facility that operated as a conditionally exempt small quantity generator.

9. Paragraph 9 sets forth legal conclusions which do not require a response.

10. Respondent admits the allegation in paragraph 10.

11. Respondent admits the allegation in paragraph 11.

12. Respondent denies the allegations in paragraph 12 except that Respondent admits that it conducts maintenance operations at several other facilities owned and operated by Respondent in Brooklyn, Queens and Staten Island, New York (the "remote facilities"), and that such facilities include a facility located at 8302-8624 Ditmas Avenue, Brooklyn, New York (the "Canarsie facility"), a facility located at 25 Willow Avenue, Staten Island, New York ("the Clifton facility"), a facility located at 7801 57th Avenue, Queens, New York (the "Newtown facility"), and a facility located at 77 6th Street, Brooklyn, New York (the "Citizens Gate facility"), and further admits that solid wastes, a small portion of which may be hazardous wastes, is generated at the remote facilities.

13. Respondent denies the allegations in paragraph 13 except that Respondent admits that it generated spent solvents and paint chip wastes containing lead.

14. Respondent admits the allegations in paragraph 14.

15. Paragraph 15 sets forth legal conclusions which do not require a response.

16. Paragraph 16 sets forth legal conclusions which do not require a response.

17. Respondent denies the allegations in paragraph 17, except that Respondent admits that, in the past and on an irregular basis, it transported to the Greenpoint facility for consolidation and, if appropriate, testing, waste generated by maintenance operations conducted at its remote facilities.

18. Respondent denies the allegations in paragraph 18, except that Respondent admits that, at times in the past it transported to the Greenpoint facility waste generated by maintenance operations conducted at its remote facilities. Respondent explains that when Respondent transported such waste, Respondent was exempt from the requirements for transporters by virtue of the exemption at 6 NYCRR 364.1(e)(2)(xvi) described more fully below.

19. Paragraph 19 sets forth legal conclusions which do not require a response.

20. Respondent denies the allegations in paragraph 20, except that Respondent admits that Respondent has stored hazardous waste, as generator only, at the Greenpoint facility. Respondent further admits that some of the waste stored at the Greenpoint facility originated at the remote properties and was consolidated at Greenpoint. Respondent explains that, by virtue of the operation of 6 NYCRR 364.1(e)(2)(xvi), the Greenpoint facility is the point of generation of such consolidated wastes.

21. Respondent denies the allegations in paragraph 21.

COUNT 1

22. Respondent restates and incorporates each response contained in paragraphs 1-21, inclusive, as if fully set forth herein.

23. Paragraph 23 sets forth legal conclusions which do not require a response. Respondent explains that 6 NYCRR 364.1(e)(2)(xvi) exempts from the transporter and other related requirements for public utility vehicles that are transporting wastes to the utility's central collection facility, where such transport is incidental to the primary function of the vehicle. Persons qualifying for this exemption are not required to obtain an EPA identification number.

24. Respondent denies the allegation of Paragraph 24 except that Respondent admits that the paint chip waste was transported from the remote properties to Greenpoint for consolidation as set forth.

25. Respondent admits the allegations in paragraph 25.

26. Respondent admits that its transport of waste alleged in paragraphs 24 and 25 was conducted by Respondent without notice to the EPA and without having obtain an EPA identification number as a transporter. Respondent explains that 6 NYCRR 364.1(e)(2)(xvi) provides an exemption from the transporter and other requirements for public utility vehicles that are transporting wastes to a central collection facility where such transport is incidental to the primary function of the vehicle. Persons qualifying for this exemption are not required to notify the EPA or obtain an EPA identification number.

27. Respondent denies the allegations in paragraph 27.

COUNT 2

28. Respondent restates and incorporates each response contained in paragraphs 1 through 21, inclusive, and paragraphs 24 and 25 as if fully set forth herein.

29. Paragraph 29 sets forth legal conclusions which do not require a response.

30. Respondent admits the allegations in paragraph 30.

31. Respondent admits the allegations in paragraph 31.

32. Respondent admits the allegations in paragraph 32.

33. Respondent admits the allegations in paragraph 33.

34. Respondent admits paragraph 34 that the transports alleged in paragraphs 30-33 were carried out by Respondent without having prepared a hazardous waste manifest for any of the four shipments. Respondent explains that 6 NYCRR 364.1(e)(2)(xvi) provides an exemption from the manifest requirements for persons sending wastes to a central collection facility via company-owned public utility vehicles where such transport is incidental to the primary function of the vehicle.

35. Respondent denies the allegations in paragraph 35.

COUNT 3

36. Respondent restates and incorporates its responses to paragraphs 1-21, 24, 25 and 30 through 33, inclusive, as if set forth fully herein.

37. Respondent denies the allegations in paragraph 37, except that Respondent admits that the wastes transported by Respondent from the Newtown and Citizens Gate facilities, as alleged in paragraphs 30-33 were accepted by the Greenpoint facility pending disposal. Respondent explains that such wastes were consolidated and accumulated, pursuant to the applicable regulations, for no more than 90 days.

38. Respondent denies the allegations in paragraph 38, and explains that such wastes were consolidated and accumulated pursuant to the applicable generator regulations. Respondent further explains that 6 NYCRR 364.1(e)(2)(xvi) provides that, when wastes are transported by public utility collection vehicles, the transport is incidental to the primary function of the vehicle, and the wastes are brought to a central collection facility for consolidation prior to shipment, the central collection facility shall be considered the point of generation.

39. Respondent denies that it was operating the Greenpoint facility as a hazardous waste storage facility. Respondent admits that it never notified EPA or the State that it was operating the Greenpoint facility as a hazardous waste storage facility and that it did not obtain a permit or interim status. Respondent explains that it was not required to do so pursuant to 6 NYCRR 364.1(e)(2)(xvi).

40. Paragraph 40 sets forth legal conclusions which do not require a response. Respondent explains that RCRA § 3005 and 6 NYCRR 372.4(a)(1), (f) and Part 373 do not apply to a generator that merely accumulates hazardous waste in accordance with applicable regulations prior to shipment off-site.

41. Respondent denies the allegations in paragraph 41.

COUNT 4

42. Respondent restates and incorporates each response contained in paragraphs 1 through 21, inclusive, as if fully set forth herein.

43. Respondent admits the allegations in paragraph 43.

44. Paragraph 44 sets forth legal conclusions which do not require a response.

45. Respondent admits the allegations in paragraph 45.

46. Respondent admits the allegations in paragraph 46.

47. Respondent admits the allegations in paragraph 47.

48. Respondent admits the allegations in paragraph 48.

COUNT 5

49. Respondent restates and incorporates its responses to paragraphs 1 through 21, inclusive, as if fully set forth herein.

50. Respondent admits the allegations in paragraph 50.

51. Paragraph 51 sets forth legal conclusions which do not require a response.

52. Respondent denies the allegations in paragraph 52. Respondent explains that, pursuant to the exemption at 6 NYCRR 364.1(e)(2)(xvi), no manifest was required for the transport of such waste and that the Greenpoint facility is considered the point of generation of such waste. Because of this exemption, Respondent was not required to obtain an EPA generator identification number for the Citizens Gate facility.

53. Respondent admits the allegations in paragraph 53; however, Respondent explains that it was not required to do so pursuant to the exemption at 6 NYCRR 364.1(e)(2)(xvi).

54. Respondent admits the allegations in paragraph 54; however, Respondent explains that it was not required to do so pursuant to the exemption at 6 NYCRR 364.1(e)(2)(xvi).

55. Respondent denies the allegations in paragraph 55.

COUNT 6

56. Respondent reincorporates its responses to paragraphs 1-21, inclusive, as if fully set forth herein.

57. Respondent admits the allegations in paragraph 57.

58. Paragraph 58 sets forth legal conclusions which do not require a response.

59. Respondent admits the allegations in Paragraph 59.

60. Respondent admits the allegations in Paragraph 60.

61. Respondent admits the allegations in paragraph 61.

62. Respondent admits the allegations in paragraph 62.

COUNT 7

63. Respondent restates and incorporates each response contained in paragraphs 1 through 21, inclusive, as if fully set forth herein.

64. Respondent admits the allegations in paragraph 64.

65. Paragraph 65 sets forth legal conclusions which do not require a response.

66. Respondent denies the allegations in paragraph 66. Respondent explains that, pursuant to the exemption at 6 NYCRR 364.1(e)(2)(xvi), no manifest was required for the transport of such waste and that the Greenpoint facility is considered the point of generation of such waste. Because of this exemption, Respondent was not required to obtain an EPA generator identification number for the Newtown facility.

67. Respondent admits the allegations in paragraph 67; however, Respondent explains that it was not required to do so pursuant to the exemption at 6 NYCRR 364.1(e)(2)(xvi).

68. Respondent admits the allegations in paragraph 68; however, Respondent explains that it was not required to do so pursuant to the exemption at 6 NYCRR 364.1(e)(2)(xvi).

69. Respondent denies the allegations in paragraph 69.

DEFENSES

70. Pursuant to 6 NYCRR 364.1(e)(2)(xvi), Respondent is exempt from the requirement to obtain an EPA transporter identification number for shipments of hazardous waste by company-owned public utility vehicles where the transport of such waste is incidental to the primary function of the vehicle. (Count 1).

71. Pursuant to 6 NYCRR 364.1(e)(2)(xvi), Respondent is exempt from the requirement to prepare a manifest for shipments of hazardous waste by company-owned public utility vehicles where the transport of such waste is incidental to the primary function of the vehicle. (Count 2).

72. Pursuant to the exemption of 6 NYCRR 364.1(e)(2)(xvi), the Greenpoint facility shall be considered the point of generation of hazardous wastes transported to a central collection facility by public utility vehicles where the transport of such waste is incidental to the primary function of the vehicle. Because the Greenpoint facility is the point of generation, it is subject only to the accumulation time requirements for generators and not to the storage facility requirements. (Count 3).

73. Pursuant to the exemption of 6 NYCRR 364.1(e)(2)(xvi), no manifests were required for the shipments of paint chip waste from the Citizens Gate and Newtown facilities, and Greenpoint shall be considered the point of generation of such wastes. Consequently, Respondent was not required to obtain EPA generator identification numbers for Citizens Gate and Newtown facilities. (Counts 5 and 7).

II. REQUEST FOR HEARING

Pursuant to Section 3008(b) of RCRA, Respondent hereby requests a hearing in this matter to address all of the allegations placed in issue above, to contest the amount of the penalty proposed in the Complaint, and to assert its entitlement to judgment as a matter of law.

DATE: November 1, 1993

THE BROOKLYN UNION GAS COMPANY

By:


Jeffrey J. Davidson
Counsel for

The Brooklyn Union Gas Company

CERTIFICATE OF SERVICE

This is to certify that on the day of November 1, 1993, I served a true and correct copy of the foregoing Answer by certified mail to the Regional Hearing Clerk.

By: 

Jeffrey J. Davidson
Counsel for
The Brooklyn Union Gas Company

Yellow
29
9/29/93

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

IN THE MATTER OF:

Brooklyn Union Gas Company
One Metrotech Center
Brooklyn, New York 11201-3851

(Current EPA Identification Numbers
as of the Date of Complaint
Issuance:

Greenpoint Energy Facility
NYD006978795
Clifton Gas Station
NYD980532071
Canarsie Service Station
NYD987040615
Newtown Holder Service Station
NYD987040623
Citizens Gate Service Station
NYD987040631)

Proceeding under Section 3008
of the Resource Conservation
and Recovery Act, 42 U.S.C.
§ 6928

COMPLAINT, COMPLIANCE
ORDER, AND NOTICE OF
OPPORTUNITY FOR HEARING

Docket Nos. II RCRA-93-0214
(A - E)

I. COMPLAINT

Introduction

1. This is a civil administrative proceeding instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) and the Hazardous and Solid Waste Amendments of 1984, (HSWA), 42 U.S.C. §§ 6901-6991.

2. Section 3006(b), Title 42 U.S.C. § 6926(b), provides that the Administrator of the United States Environmental Protection Agency (EPA) may, if certain criteria are met, authorize a state to operate a hazardous waste program in lieu of the federal program. The State of New York received final

authorization to administer its hazardous waste program on May 29, 1986. Section 3008 of the Act, 42 U.S.C. § 6928, authorizes EPA to enforce the provisions of the authorized State program and the regulations promulgated thereunder. EPA retains primary responsibility for requirements promulgated pursuant to HSWA, until the State of New York amends its program to incorporate the HSWA requirements and receives authorization to enforce such requirements. New York received authorization for many of the HSWA requirements on May 22, 1992.

3. Complainant in this proceeding, Conrad Simon, Director of the Air & Waste Management Division of the U.S. Environmental Protection Agency, Region II, has been duly delegated the authority to institute this action.

4. The Complainant is issuing this COMPLAINT, COMPLIANCE ORDER AND NOTICE OF OPPORTUNITY FOR HEARING to Respondent based on the following: inspections of several facilities owned and operated by Respondent, which inspections were conducted on or about February 22, June 25, and June 28, 1993, by duly authorized representatives of EPA; a letter dated March 18, 1993, received from Respondent which provided information regarding its hazardous waste management procedures at several of its facilities; and a written response from Respondent, dated August 10, 1993, to an Information Request letter issued by EPA to Respondent on or about June 29, 1993, pursuant to RCRA § 3007, 42 U.S.C. § 6927.

5. The information obtained by EPA through the above inspections and documents, revealed that Respondent has violated or is in violation of one or more requirements of Subtitle C of RCRA, the New York State Environmental Conservation Law, and the regulations promulgated thereunder concerning the management of hazardous waste.

General Allegations

6. Respondent is the Brooklyn Union Gas Company.

7. Respondent is a person, as that term is defined in 40 Code of Federal Regulations (C.F.R.) § 260.10 and Title 6 New York Codes, Rules, and Regulations (NYCRR) Part 370.

8. Pursuant to RCRA § 3010, 42 U.S.C. § 6930, Respondent, at all times relevant herein, was required to notify EPA and the State of New York (the "State") of its activities as a generator or transporter of hazardous waste, or as the owner or operator of a facility for the treatment, storage, or disposal of hazardous waste.

9. The submission of notice of a hazardous waste activity being conducted at a particular facility on EPA Form 8700-12 constitutes an application for an EPA identification number for such facility.

10. By notice dated August 18, 1980, Respondent informed EPA that it conducts activities as a generator of hazardous waste, as that term is defined in 40 C.F.R. § 261.3 and 6 NYCRR 371.1(d) (hereinafter "hazardous waste"), at a facility owned and operated by Respondent at 287 Maspeth Avenue, Brooklyn, New York (the "Greenpoint facility").

11. In response to the notice alleged above in paragraph 10, EPA provided Respondent with EPA identification number NYD006978795 for the Greenpoint facility as a generator of hazardous waste.

12. Respondent conducts maintenance operations, in which hazardous wastes are generated, at several other facilities owned and operated by Respondent in Brooklyn, Queens, and Staten Island, New York (the "remote facilities"). Such facilities include, but are not limited to a facility located at 8302-8624 Ditmas Avenue, Brooklyn, New York (the "Canarsie facility"), a facility located at 25 Willow Avenue, Staten Island, New York (the "Clifton facility"), a facility located at 7801 57th Avenue, Queens, New York (the "Newtown facility"), and a facility located at 77 6th Street, Brooklyn, New York (the "Citizens Gate facility").

13. The hazardous wastes generated as a result of the maintenance operations alleged above in paragraph 12, and their EPA hazardous waste codes (as defined in 40 C.F.R. Part 261) include, without limitation, the following: spent solvents (D001) and paint chip wastes containing lead (D008).

14. By reason of the activities alleged in paragraphs 12 and 13 above, Respondent is a generator of hazardous waste, as those terms are defined in 40 C.F.R. §§ 260.10 and 261.3 and in 6 NYCRR Part 370, and 371.1(d).

15. 40 C.F.R. Part 262 and 6 NYCRR Part 372 establish Federal and State requirements for hazardous waste generators.

16. Generators of hazardous waste who transport such waste are also subject to the requirements of 40 C.F.R. Part 263 and 6 NYCRR Part 372, which establish Federal and State requirements for hazardous waste transporters.

17. Respondent transports to the Greenpoint facility hazardous waste generated by maintenance operations conducted at its remote facilities.

18. By reason of the activity alleged in paragraph 17 above, Respondent is a transporter of hazardous waste, as those terms are defined in 40 C.F.R. §§ 260.10 and 261.3, and in 6 NYCRR Part 370, and 371.1(d).

19. Owners and operators of all facilities which treat, store, or dispose of hazardous waste are subject to the requirements of 40 C.F.R. Parts 260 through 270, and 6 NYCRR Parts 372 and 373, which establish Federal and State requirements for permitted and interim status hazardous waste storage facilities.

20. Respondent stores at the Greenpoint facility hazardous waste generated by maintenance operations conducted at its remote facilities.

21. By reason of the activities alleged in paragraph 20 above, Respondent operates the Greenpoint facility as a hazardous waste storage facility, as those terms are defined in 40 C.F.R. §§ 260.10 and 261.3, and in 6 NYCRR Part 370, and 371.1(d).

COUNT 1

22. Complainant realleges each allegation contained in paragraphs 1 through 21, inclusive, as if fully set forth herein.

23. Pursuant to 40 C.F.R. § 263.11 and 6 NYCRR 372.3(a)(3), a transporter must not transport hazardous waste without having received an EPA identification number.

24. In or about the months of July and August 1991, and August and September 1992, Respondent transported hazardous waste (paint chip waste containing lead) from the Newtown and Citizens Gate facilities to the Greenpoint facility. (A chart follows, reflecting the quantity of such hazardous waste transported):

| Facility | Month | Waste Type | Waste Quantity (pounds) |
|---------------|-------|------------------|-------------------------|
| Newtown | 7/91 | paint chip waste | 6966 |
| | 8/91 | paint chip waste | 1501 |
| | 8/92 | paint chip waste | 1208 |
| Citizens Gate | 9/92 | paint chip waste | 635 |

25. The four transports alleged above in paragraph 24, were carried out by Respondent by means of trucks owned and operated by Respondent.

26. Respondent's transport of hazardous waste alleged above in paragraphs 24 and 25, was conducted by Respondent without notice to EPA and the State and without having obtained an EPA identification number as a transporter.

27. Respondent's transport of hazardous waste without first notifying EPA and the State and without obtaining an EPA identification number is a violation of RCRA § 3010, 42 U.S.C. § 6930, 40 C.F.R. § 263.11 and 6 NYCRR 372.3(a)(2) and (3).

COUNT 2

28. Complainant realleges each allegation contained in paragraphs 1 through 21 inclusive, and paragraphs 24 and 25 as if fully set forth herein.

29. Pursuant to 40 C.F.R. §§ 262.20 and 263.20, and 6 NYCRR 372.2(b)(1), a generator who transports hazardous waste must prepare a manifest according to the manifest instructions included in 6 NYCRR 372 Appendix 30.

30. In or about July 1991, 6966 pounds of paint chip waste containing lead generated at the Newtown facility were transported by Respondent from the Newtown facility to the Greenpoint facility by means of trucks owned and operated by Respondent.

31. In or about August 1991, 1501 pounds of paint chip waste containing lead generated at the Newtown facility were transported by Respondent from the Newtown facility to the Greenpoint facility by means of trucks owned and operated by Respondent.

32. On or about August 4, 1992, 1208 pounds of paint chip waste containing lead generated at the Newtown facility were transported by Respondent from the Newtown facility to the Greenpoint facility by means of trucks owned and operated by Respondent.

33. On or about September 17, 1992, 635 pounds of paint chip waste containing lead generated at the Citizens Gate facility were transported by Respondent from the Citizens Gate facility to the Greenpoint facility by means of trucks owned and operated by Respondent.

34. The transports alleged above in paragraphs 30-33 were carried out by Respondent without having prepared a hazardous waste manifest for any of the four shipments.

35. Respondent's transports of hazardous waste without accompanying manifests are violations of 40 C.F.R. §§ 262.20 and 263.20, and 6 NYCRR 372.2(b)(1) and (5).

COUNT 3

36. Complainant realleges each allegation contained in paragraphs 1 through 21, 24, 25 and 30 through 33 inclusive, as if fully set forth herein.

37. The hazardous wastes transported by Respondent from the Newtown and Citizens Gate facilities, as alleged above in paragraphs 30-33, were accepted by and stored at the Greenpoint facility, pending disposal.

38. By reason of its acceptance and storage of hazardous waste at the Greenpoint facility, as alleged above in paragraph 37, Respondent operated the Greenpoint facility as a hazardous waste storage facility, as defined in 40 C.F.R. §§ 260.10 and 261.3, and in 6 NYCRR Part 370, and 371.1(d).

39. Respondent never notified EPA or the State that it was operating the Greenpoint facility as a hazardous waste storage facility, nor did Respondent ever obtain a permit or interim status.

40. Pursuant to RCRA § 3005, 42 U.S.C. § 6295, and 6 NYCRR 372.4(a)(1), (f) and Part 373, the storage of hazardous waste at any facility within the State is prohibited unless the person(s) owning or operating the facility has obtained a permit or achieved interim status.

41. Respondent's storage of hazardous waste at the Greenpoint facility without notice and without obtaining a permit or interim status is a violation of RCRA §§ 3005 and 3010, 42 U.S.C. §§ 6925 and 6930, and 6 NYCRR 372.4(a)(1), (3) and (f).

COUNT 4

42. Complainant realleges each allegation contained in paragraphs 1 through 21 inclusive, as if fully set forth herein.

43. From May 1992 through December 1992, Respondent generated between 406 and 1597 pounds per month of hazardous waste (spent solvents) at the Canarsie facility. (A chart

follows, reflecting the time and amount of generation of such hazardous waste):

| Month | Total Waste Quantity (pounds) |
|-------|----------------------------------|
| 5/92 | 623 |
| 6/92 | 406 |
| 7/92 | 406 |
| 8/92 | 1597 |
| 9/92 | 406 |
| 10/92 | 406 |
| 11/92 | 406 |
| 12/92 | 857 |

44. Pursuant to 40 C.F.R. § 262.12 and 6 NYCRR 372.2(a)(3), a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number.

45. By reason of the activities alleged above in paragraph 43, the Canarsie facility was a generator of hazardous waste and subject to the regulations set forth in 40 C.F.R. Part 262 and 6 NYCRR Part 372.

46. At all times relevant herein, Respondent failed to notify EPA and the State of its activities as a generator of hazardous waste at the Canarsie facility.

47. At all times relevant herein, Respondent had not obtained an EPA identification number for the Canarsie facility as a generator of hazardous waste.

48. Respondent's failure to notify EPA and the State and to obtain an EPA identification number, as alleged above in paragraphs 46 and 47, is a violation of RCRA § 3010, 42 U.S.C. § 6930, 40 C.F.R. § 262.12 and 6 NYCRR 372.2(a)(1) and (3).

COUNT 5

49. Complainant realleges each allegation contained in paragraphs 1 through 21 inclusive, as if fully set forth herein.

50. In or about September 1992, Respondent generated 635 pounds of hazardous waste (paint chip waste containing lead) at the Citizens Gate facility.

51. Pursuant to 40 C.F.R. § 262.12 and 6 NYCRR 372.2(a)(3), a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number.

52. By reason of the activities alleged above in paragraph 50, the Citizens Gate facility was a generator of hazardous waste and subject to the regulations set forth in 40 C.F.R. Part 262 and 6 NYCRR Part 372.

53. At all times relevant herein, Respondent failed to notify EPA and the State of its activities as a generator of hazardous waste at the Citizens Gate facility.

54. At all times relevant herein, Respondent had not obtained an EPA identification number for the Citizens Gate facility as a generator of hazardous waste.

55. Respondent's failure to notify EPA and the State and to obtain an EPA identification number, as alleged above in paragraphs 53 and 54, is a violation of RCRA §3010, 42 U.S.C. §6930, 40 C.F.R. § 262.12 and 6 NYCRR 372.2(a)(1) and (3).

COUNT 6

56. Complainant realleges each allegation contained in paragraphs 1 through 21 inclusive, as if fully set forth herein.

57. From June through November 1992, Respondent generated between 234 and 406 pounds per month of hazardous waste (spent solvents) at the Clifton facility. (A chart follows, reflecting the time and amount of generation of such hazardous waste):

| Month | Total Waste Quantity (pounds) |
|-------|----------------------------------|
| 6/92 | 289 |
| 7/92 | 406 |
| 8/92 | 234 |
| 10/92 | 406 |
| 11/92 | 248 |

58. Pursuant to 40 C.F.R. § 262.12 and 6 NYCRR 372.2(a)(3), a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number.

59. By reason of the activities alleged above in paragraph 57, the Clifton facility was a generator of hazardous waste and subject to the regulations set forth in 40 C.F.R. Part 262 and 6 NYCRR Part 372.

60. At all times relevant herein, Respondent failed to notify EPA and the State of its activities as a generator of hazardous waste at the Clifton facility.

61. At all times relevant herein, Respondent had not obtained an EPA identification number for the Clifton facility as a generator of hazardous waste.

62. Respondent's failure to notify EPA and the State and to obtain an EPA identification number, as alleged above in paragraphs 60 and 61, is a violation of RCRA §3010, 42 U.S.C. §6930, 40 C.F.R. § 262.12 and 6 NYCRR 372.2(a)(1) and (3).

COUNT 7

63. Complainant realleges each allegation contained in paragraphs 1 through 21 inclusive, as if fully set forth herein.

64. In or about July 1991, August 1991 and August 1992, Respondent generated 6966, 1501, and 1208 pounds of hazardous waste (paint chip wastes containing lead), respectively, at the Newtown facility. (A chart follows, reflecting the time and amount of generation of such hazardous waste):

| Month | Waste Quantity (pounds) |
|-------|----------------------------|
| 7/91 | 6966 |
| 8/91 | 1501 |
| 8/92 | 1208 |

65. Pursuant to 40 C.F.R. § 262.12 and 6 NYCRR 372.2(a)(3), a generator must not treat, store, dispose of, transport, or offer for transportation, hazardous waste without having received an EPA identification number.

66. By reason of the activities alleged above in paragraph 64, the Newtown facility was a generator of hazardous waste and subject to the regulations set forth in 40 C.F.R. Part 262 and 6 NYCRR Part 372.

67. At all times relevant herein, Respondent failed to notify EPA and the State of its activities as a generator of hazardous waste at the Newtown facility.

68. At all times relevant herein, Respondent had not obtained an EPA identification number for the Newtown facility as a generator of hazardous waste.

69. Respondent's failure to notify EPA and the State and to obtain an EPA identification number, as alleged above in paragraphs 67 and 68, is a violation of RCRA § 3010, 42 U.S.C. § 6930, 40 C.F.R. § 262.12 and 6 NYCRR 372.2(a)(1) and (3).

PROPOSED CIVIL PENALTY

Based on the facts alleged in this Complaint and upon those factors which the Complainant must consider pursuant to Section 3008(a)(3) of RCRA, 42 U.S.C. § 6928(a)(3) (as discussed in the RCRA Civil Penalty Policy), including the seriousness of the violations, any good faith efforts by the Respondent to comply with applicable requirements, as well as such other matters as justice may require, the Complainant proposes that the Respondent be assessed the following civil penalty for the violations alleged in this Complaint. A penalty calculation worksheet and narrative explanation to support the penalty figure for each violation cited in this Complaint are included in Attachment I, below. Matrices employed in the determination of individual and multi-day penalties are included as Attachments II and III, below.

| | |
|----------------|--|
| <u>Count 1</u> | For violation of RCRA § 3010, 40 C.F.R. § 263.11 and 6 NYCRR 372.3(a)(2) and(3)\$8,000.00 |
| <u>Count 2</u> | For violation of 40 C.F.R. §§ 262.20 and 263.20, and 6 NYCRR 372.2(b)(1)\$9,600.00 |
| <u>Count 3</u> | For violation of RCRA §§ 3005 and 3010, and 6 NYCRR 372.4(a)(1) and (3)\$65,600.00 |
| <u>Count 4</u> | For violation, at the Canarsie facility, of RCRA § 3010, 40 C.F.R. § 262.12 and 6 NYCRR 372.2(a)(1) and (3)\$1,500.00 |

| | |
|--|--|
| <u>Count 5</u> | For violation, at the Citizens Gate facility, of RCRA § 3010, 40 C.F.R. § 262.12 and 6 NYCRR 372.2(a)(1) and(3)\$1,500.00 |
| <u>Count 6</u> | For violation, at the Clifton facility, of RCRA § 3010, 40 C.F.R. § 262.12 and 6 NYCRR 372.2(a)(1) and(3)\$1,500.00 |
| <u>Count 7</u> | For violation, at the Newtown facility, of RCRA § 3010, 40 C.F.R. § 262.12 and 6 NYCRR 372.2(a)(1) and(3)\$1,500.00 |
| TOTAL PENALTY \$89,200.00 | |

II. COMPLIANCE ORDER

Based upon the foregoing, and pursuant to the authority of Section 3008 of RCRA, Complainant herewith issues the following Compliance Order against Respondent:

1. Respondent shall work with the EPA personnel identified in II. 5. below to insure that any notification required by law is submitted.
2. Respondent shall, immediately upon the effective date of this Compliance Order, cease the unauthorized transport of hazardous waste and/or otherwise comply with all applicable state and federal regulatory requirements for the transport of hazardous waste, including the use of hazardous waste manifests for all off-site shipments of hazardous waste.
3. Respondent shall, within twenty (20) days of the effective date of this Compliance Order, cease the unauthorized storage of hazardous waste and/or otherwise comply with all applicable state and federal regulatory requirements for accumulation of hazardous waste by generators.
4. Respondent shall submit to EPA written notice of its compliance (accompanied by a copy of all appropriate supporting documentation) or noncompliance for each of the requirements set forth herein within fifteen (15) calendar days of the effective date of this Compliance Order. If the Respondent is in noncompliance with a particular requirement, the notice shall state the reasons for noncompliance and shall provide a schedule

for achieving expeditious compliance with the requirement.

5. Respondent shall submit the above required information and notices to the following addressees:

George C. Meyer, P.E., Chief
Hazardous Waste Compliance Branch
U.S. Environmental Protection Agency, Region II
26 Federal Plaza, Room 1000F
New York, New York 10278

Leonard Grossman
Hazardous Waste Compliance Branch
U.S. Environmental Protection Agency, Region II
26 Federal Plaza, Room 1000G
New York, New York 10278

NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

Pursuant to the terms of Section 3008(c) of RCRA, a violator failing to take corrective action within the time specified in a Compliance Order is liable for a civil penalty of up to \$25,000 for each day of continued noncompliance. Such continued noncompliance may also result in suspension or revocation of any permits issued to the violator whether issued by the Administrator or the State.

III. NOTICE OF OPPORTUNITY TO REQUEST A HEARING

As provided in Section 3008(b) of RCRA, and in accordance with EPA's Consolidated Rules of Practices Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits, 40 C.F.R. Part 22, 45 Fed. Reg. 24360 (April 9, 1980) (a copy of which accompanies this Complaint) you have the right to request a Hearing to contest any material fact set out in the Complaint, or to contest the appropriateness of the proposed penalty, or the terms of the Compliance Order. (Consistent with the provisions of Section 3008(b) of RCRA, should you request a public Hearing, notice of the Hearing will be provided and the Hearing will be open to the general public. However, in the absence of such a specific request, public notice of a scheduled Hearing will not be published.)

To avoid being found in default and having the proposed civil penalty assessed and the Compliance Order confirmed without further proceedings, you must file a written Answer to the Complaint, which may include a request for a Hearing. Your Answer, if any, must be addressed to the U.S. Environmental

Protection Agency, Regional Hearing Clerk, 26 Federal Plaza, New York, New York 10278, and must be filed within thirty (30) calendar days of your receipt of this Complaint, Compliance Order, and Notice of Opportunity for Hearing.

Your answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint, and should contain (1) a clear statement of the facts which constitute the grounds of your defense, and (2) a concise statement of the contentions which you intend to place in issue at the Hearing.

The denial of any material fact, or the raising of any affirmative defense, will be construed as a request for a Hearing. Failure to deny any of the factual allegations in the Complaint will be deemed to constitute an admission of the undenied allegations. Your failure to file a written Answer within thirty (30) calendar days of receipt of this instrument will be deemed to represent your admission of all facts alleged in the Complaint, and a waiver of your right to a formal Hearing to contest any of the facts alleged by the Complainant. Your default may result in the final issuance of the Compliance Order, and assessment of the proposed civil penalty, without further proceedings.

INFORMAL SETTLEMENT CONFERENCE

Whether or not you request a Hearing, the EPA encourages settlement of this proceeding consistent with the provisions of RCRA. At an informal conference with a representative of the Complainant you may comment on the charges and provide whatever additional information you feel is relevant to the disposition of this matter, including any actions you have taken to correct the violation, and any other special circumstances you care to raise. The Complainant has the authority to modify the amount of the proposed penalty, where appropriate, to reflect any settlement agreement reached with you in such a conference, or to recommend that any or all of the charges be dismissed, if the circumstances so warrant. Your request for any informal conference and other questions that you may have regarding this Complaint, Compliance Order, and Notice of Opportunity for Hearing should be directed to Richard J. Weisberg, Esq., Office of Regional Counsel, Air, Waste & Toxic Substances Branch, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza (Rm. 400), New York, New York 10278, telephone (212) 264-6259.

Please note that a request for an informal settlement conference does not extend the thirty (30) day period during which a written Answer and Request for a Hearing must be submitted. The informal conference procedure may be pursued as an alternative to, or simultaneously with, the adjudicatory

Hearing procedure. However, no penalty reduction will be made simply because such a conference is held. Any settlement which may be reached as a result of such conference will be embodied in a written Consent Agreement and Consent Order to be issued by the Regional Administrator. Your signing of such Consent Agreement would constitute a waiver of your right to request a Hearing on any matter stipulated to therein.

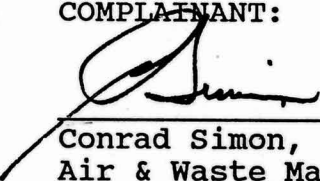
Entering into a settlement through signing of such Consent Agreement and continued compliance with the terms and conditions set forth in both the Consent Agreement and Compliance Order will terminate this administrative litigation and the civil proceedings arising out of the allegations made in the Complaint. Your entering into a settlement and continuing compliance with the conditions set forth in the Consent Agreement and Compliance Order do not extinguish, satisfy or otherwise affect your obligation and responsibility to comply with all other applicable regulations and requirements set forth in, and/or promulgated pursuant to, RCRA, and to maintain such compliance.

RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

Instead of filing an Answer, requesting a Hearing or requesting an informal settlement conference, you may choose to comply with the terms of the Compliance Order, and to pay the proposed penalty. In that case, payment should be made by sending a check in the amount of the penalty specified in the "Proposed Civil Penalty" Section of this instrument to the Regional Hearing Clerk, EPA - Region II, P.O. Box 360188M, Pittsburgh, PA 15251. A copy of the check should be sent to Richard J. Weisberg, Esq., Office of Regional Counsel, Air, Waste & Toxic Substances Branch, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza (Rm. 400), New York, New York 10278. Your check must be made payable to the Treasurer of the United States.

DATE: *September 29, 1993*

COMPLAINANT:


Conrad Simon, Director
Air & Waste Management Division
Environmental Protection Agency
Region II

TO: Robert H. Preusser
Vice-President and Chief Engineer
Brooklyn Union Gas Company
One Metrotech Center
Brooklyn, New York 11201-3851

cc: Lawrence Nadler, Unit Supervisor
Hazardous Waste Compliance and Enforcement Unit, NYSDEC

bcc: Joseph Clore, 2OPM-ISS
Carolyn Carr, RAATS, OS-520
Richard J. Weisberg, 2ORC-AWTS
George Meyer, 2AWM-HWC
John Gorman, 2AWM-HWC
Phil Flax, 2AWM-HWC
Leonard Grossman, 2AWM-HWC

Certificate of Service

This is to certify that on the day of Sept 29, 1993, I served a true and correct copy of the foregoing Complaint and a copy of the Consolidated Rules of Practice by certified mail to Robert H. Preusser Vice-President and Chief Engineer, Brooklyn Union Gas Company, One Metrotech Center, Brooklyn, New York 11201-3851. I hand carried the original and a copy of the foregoing Complaint to the Regional Hearing Clerk.

Don Ahearn

Attachment 1

Penalty Calculation Worksheet

Respondent: Brooklyn Union Gas Company

Address: One Metrotech Center, Brooklyn, New York 11201

Regulation Violated: RCRA § 3010, 40 C.F.R. § 263.11 and 6
NYCRR 372.3(a)(2) and (3). Failure to
obtain an EPA identification number as a
transporter of hazardous waste (Count
1).

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix.....\$8,000.00
 - (a) Potential for harm.....MODERATE
 - (b) Extent of Deviation.....MAJOR
2. Select an amount from the appropriate multiday matrix cell.....N/A
3. Multiply line 2 by number of days of violation minus 1.....N/A
4. Add line 1 and line 3.....N/A
5. Percent increase/decrease for good faith.....N/A
6. Percent increase/decrease for willfulness/negligence.....N/A
7. Percent increase for history of noncompliance...N/A
8. Total lines 5 through 7.....N/A
9. Multiply line 4 by line 8.....N/A
10. Calculate economic benefit.....N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted in the complaint.....\$8,000.00

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Regulation Violated: RCRA §3010, 40 C.F.R. § 263.11 and 6 NYCRR 372.3(a)(2) and (3). Failure to provide notice and to obtain an EPA identification number as a transporter of hazardous waste (Count 1).

1. Gravity Based Penalty
 - a) Potential for Harm - The "Potential for Harm" present in this violation was determined to be MODERATE. Respondent's failure to notify EPA and to obtain an EPA identification number imposed a substantial adverse effect on the regulatory procedures for implementing the RCRA program, since it enabled Respondent to evade entirely the national tracking system for hazardous waste transporters. Respondent did, however, utilize a licensed hazardous waste hauler to ship some of its waste streams, including its spent solvents.
 - b) Extent of Deviation - The "Extent of Deviation" present in this violation was determined to be MAJOR. Respondent's failure to notify EPA of its activities as a transporter and to obtain an EPA identification number is in complete non-compliance with the statutory and regulatory requirements for such notification.

The applicable cell ranges from \$8,000.00 to \$10,999.00. The low end of the cell range was chosen, based on the relatively small quantities of hazardous waste involved.

- c) Multiple/Multi-day - Moderate potential for harm and major extent of deviation invoke the mandatory assessment of multi-day penalties. Multi-day penalties were not assessed, however, since failure to provide notice and obtain an EPA identification number is a one-time occurrence.

2. Adjustment Factors
 - a) Good Faith - N/A
 - b) Willfulness/Negligence - N/A
 - c) History of Compliance - N/A
 - d) Ability to Pay - N/A
 - e) Environmental Project - N/A
 - f) Other Unique Factors - N/A

3. Economic Benefit - The economic benefit resulting from this violation was determined to be negligible, as the costs avoided by the Brooklyn Union Gas Company in its failure to notify EPA of its activities as a transporter are insignificant (i.e., less than \$2,500.00).

4. Recalculation of penalty based on new information - NA

Penalty Calculation Worksheet

Respondent: Brooklyn Union Gas Company
Address: One Metrotech Center, Brooklyn, New York 11201
Regulation Violated: 40 C.F.R. §§ 262.20 and 263.20, and 6
NYCRR 372.2(b)(1) Transport of
hazardous waste without accompanying
manifests (Count 2).

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix.....\$8,000.00
 - (a) Potential for harm.....MODERATE
 - (b) Extent of Deviation.....MAJOR
2. Select an amount from the appropriate multiday
matrix cell.....\$400.00
3. Multiply line 2 by number of days of violation
minus 1..(4 x \$400).....\$1,600.00
4. Add line 1 and line 3.....\$9,600.00
5. Percent increase/decrease for good faith.....N/A
6. Percent increase/decrease for willfulness/
negligence.....N/A
7. Percent increase for history of noncompliance...N/A
8. Total lines 5 through 7.....N/A
9. Multiply line 4 by line 8.....N/A
10. Calculate economic benefit.....N/A
11. Add lines 4, 9 and 10 for penalty amount
to be inserted in the complaint.....\$9,600.00

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Regulation Violated: 40 C.F.R. §§ 262.20 and 263.20, and 6 NYCRR 372.2(b)(1) Transport of hazardous waste without accompanying manifests (Count 2).

1. Gravity Based Penalty

- (a) Potential for Harm - The Potential for Harm present in this violation was determined to be MODERATE. Respondent's transport of hazardous waste without manifests imposed a substantial adverse effect on the statutory purposes and regulatory procedures for implementing the RCRA program, since it enabled Respondent to evade entirely the national tracking system for shipments of hazardous waste. Respondent did, however, maintain an internal tracking system for its shipments of hazardous waste.
- (b) Extent of Deviation - The Extent of Deviation present in this violation was determined to be MAJOR. Respondent's failure to prepare manifests for its shipments of hazardous waste is in complete non-compliance with the statutory and regulatory requirements.

The applicable cell ranges from \$8,000.00 to \$10,999.00. The low end of the cell range was chosen, based on the relatively few shipments involved.

- (c) Multiple/Multi-day - Moderate potential for harm and major extent of deviation invoke the mandatory assessment of multi-day penalties. Multi-day penalties were assessed for each day of violation subsequent to the initial day of violation.

2. Adjustment Factors

- (a) Good Faith - N/A
- (b) Willfulness/Negligence - N/A
- (c) History of Compliance - N/A
- (d) Ability to Pay - N/A
- (e) Environmental Project - N/A
- (f) Other Unique Factors - N/A

- 3. Economic Benefit - The economic benefit resulting from this violation was determined to be negligible, as the costs avoided by the Brooklyn Union Gas Company in its failure to prepare manifests are insignificant (i.e., less than \$2,500.00)..

- 4. Recalculation of Penalty Based on New Information - N/A

Penalty Calculation Worksheet

Respondent: Brooklyn Union Gas Company
Address: One Metrotech Center, Brooklyn, New York 11201
Regulation Violated: RCRA §§ 3005 and 3010, and 6 NYCRR
372.4(a)(1) Operating a TSD without
notice and a permit (Count 3).

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix.....\$8,000.00
(a) Potential for harm.....MODERATE
(b) Extent of Deviation.....MAJOR
2. Select an amount from the appropriate multiday
matrix cell.....\$400.00
3. Multiply line 2 by number of days of violation
minus 1..(144 X \$400).....\$57,600.00
4. Add line 1 and line 3.....\$65,600.00
5. Percent increase/decrease for good faith.....N/A
6. Percent increase/decrease for willfulness/
negligence.....N/A
7. Percent increase for history of noncompliance...N/A
8. Total lines 5 through 7.....N/A
9. Multiply line 4 by line 8.....N/A
10. Calculate economic benefit.....N/A
11. Add lines 4, 9 and 10 for penalty amount
to be inserted in the complaint.....\$65,600.00

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Regulation Violated: RCRA §§3005 and 3010, and 6 NYCRR 372.4(a)(1) Operating a TSD without notice and without a permit (Count 3).

1. Gravity Based Penalty
 - a) Potential for Harm - The "Potential for Harm" present in this violation was determined to be MODERATE. Respondent's failure to provide EPA with notice of its hazardous waste storage activities and to obtain a permit or interim status for its operation of a hazardous waste storage facility imposed a substantial adverse effect on the statutory purposes and regulatory procedures for implementing the RCRA program, since it enabled Respondent to evade entirely the permitting system and related regulatory controls. Respondent did, however, retain a licensed hazardous waste transporter to ship some of its waste streams, including its spent solvents, directly from the remote facilities to a permitted TSD, and limited its illegal storage to periods of less than 90 days.
 - b) Extent of Deviation - The "Extent of Deviation" present in this violation was determined to be MAJOR. Respondent neither submitted the requisite notice, nor a permit application to EPA or the State, in complete non-compliance with the statutory and regulatory requirements.

The applicable cell ranges from \$8,000.00 to \$10,999.00. The low end of the cell range was chosen, based on the relatively small quantities of hazardous waste involved.
 - c) Multiple/Multi-day - Moderate potential for harm and major extent of deviation invoke the mandatory assessment of multi-day penalties. Multi-day penalties were assessed for 144 days of illegal storage subsequent to the first day of storage, as calculated from shipment dates and manifests provided by Respondent.
2. Adjustment Factors
 - a) Good Faith N/A; b) Willfulness/Negligence N/A;
 - c) History of Compliance N/A; d) Ability to Pay N/A;
 - e) Environmental Project N/A; f) Other Unique Factors N/A
3. Economic Benefit - The economic benefit resulting from this violation was determined to be negligible, as the costs avoided by the Brooklyn Union Gas Company in its failure to submit a permit application are insignificant (i.e., less than \$2,500.00).
4. Recalculation of Penalty Based on New Information - N/A

Penalty Calculation Worksheet

Respondent: Brooklyn Union Gas Company, Canarsie Facility
Address: 8428 Ditmas Avenue, Brooklyn, New York
Regulation Violated: RCRA §3010, 40 C.F.R. § 262.12 and 6
NYCRR 372.2(a)(3) Failure to provide
notice and to obtain an EPA
identification number as a generator of
hazardous waste (Counts 4-7).

PENALTY AMOUNT FOR COMPLAINT

1. Gravity based penalty from matrix.....\$1,500.00
 - (a) Potential for harm.....MINOR
 - (b) Extent of Deviation.....MAJOR
2. Select an amount from the appropriate multiday matrix cell.....N/A
3. Multiply line 2 by number of days of violation minus 1.....N/A
4. Add line 1 and line 3.....N/A
5. Percent increase/decrease for good faith.....N/A
6. Percent increase/decrease for willfulness/negligence.....N/A
7. Percent increase for history of noncompliance...N/A
8. Total lines 5 through 7.....N/A
9. Multiply line 4 by line 8.....N/A
10. Calculate economic benefit.....N/A
11. Add lines 4, 9 and 10 for penalty amount to be inserted in the complaint.....\$1,500.00

NARRATIVE EXPLANATION TO SUPPORT COMPLAINT AMOUNT

Regulation Violated: RCRA §3010, 40 C.F.R. § 262.12 and 6 NYCRR 372.3(a)(3) Failure to provide notice and to obtain an EPA identification number as a generator of hazardous waste (Counts 4-7).

1. Gravity Based Penalty

a) Potential for Harm - The "Potential for Harm" present in this violation was determined to be MINOR. Respondent's failure to notify EPA and to obtain an EPA identification number imposed a significant adverse effect on the regulatory procedures for implementing the RCRA program, since it enabled Respondent to evade the national tracking system for hazardous waste generators. Nevertheless, the amount of the hazardous wastes which are the subject of these counts was relatively small.

b) Extent of Deviation - The "Extent of Deviation" present in this violation was determined to be MAJOR. Respondent's failure to notify EPA of its activities as a generator and to obtain an EPA identification number is in complete non-compliance with the statutory and regulatory requirements for such notification.

The applicable cell ranges from \$1,500.00 to \$2,999.00. The low end of the cell range was chosen, based on the relatively small quantities of hazardous waste involved.

c) Multiple/Multi-day - Minor potential for harm and major extent of deviation invoke the presumed assessment of multi-day penalties. Multi-day penalties were not assessed, however, since failure to obtain an EPA identification number is a one-time occurrence.

2. Adjustment Factors

- a) Good Faith - N/A
- b) Willfulness/Negligence - N/A
- c) History of Compliance - N/A
- d) Ability to Pay - N/A
- e) Environmental Project - N/A
- f) Other Unique Factors - N/A

3. Economic Benefit - The economic benefit resulting from this violation was determined to be negligible, as the costs avoided by the Brooklyn Union Gas Company in its failure to notify EPA of its activities as a generator are insignificant (i.e., less than \$2,500.00).

4. Recalculation of penalty based on new information - N.A.

ATTACHMENT 2

EXTENT OF DEVIATION FROM REQUIREMENT

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| | MAJOR | MODERATE | MINOR |
|----------|--------------------------|--------------------------|--------------------------|
| MAJOR | \$25,000 TO 20,000 | \$19,999 TO 15,000 | \$14,999 TO 11,000 |
| MODERATE | \$10,999 TO 8,000 | \$7,999 TO 5,000 | \$4,999 TO 3,000 |
| MINOR | \$2,999 TO 1,500 | \$1,499 TO 500 | \$499 TO 100 |

ATTACHMENT 3

MULTI-DAY MATRIX

EXTENT OF DEVIATION FROM REQUIREMENT

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| | MAJOR | MODERATE | MINOR |
|----------|------------------------|----------------------|----------------------|
| MAJOR | \$5,000 TO 1,000 | \$4,999 TO 750 | \$3,000 TO 550 |
| MODERATE | \$2,200 TO 400 | \$1,600 TO 250 | \$1,000 TO 150 |
| MINOR | \$600 TO 100 | \$300 TO 100 | \$100 |

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

| | | |
|----------------------------------|---|------------------------------|
| ----- | X | |
| | : | |
| In the Matter of | : | |
| Brooklyn Union Gas Company, | : | <u>CONSENT AGREEMENT and</u> |
| | : | <u>CONSENT ORDER</u> |
| | : | |
| Respondent. | : | |
| | : | Docket Nos. |
| Proceeding under Section 3008 of | : | II RCRA-93-0214 (A - E) |
| the Resource Conservation and | : | |
| Recovery Act, 42 U.S.C. § 6928 | : | |
| ----- | X | |

PRELIMINARY STATEMENT

This civil administrative proceeding for the assessment of a penalty was instituted pursuant to Section 3008 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and the Hazardous and Solid Waste Amendments of 1984 (the "Act").

Section 3006 of the Act, 42 U.S.C. §6926, provides that the United States Environmental Protection Agency may authorize a state to administer a hazardous waste program in lieu of the federal hazardous waste program under the Act. Section 3008 of the Act, 42 U.S.C. §6928, authorizes the United States Environmental Protection Agency to enforce the provisions of a state hazardous waste program authorized under §3006 of the Act.

On May 29, 1986, and May 22, 1992, the State of New York (the "State") received, respectively, final authorization to administer a base hazardous waste program, and final authorization to administer a program to enforce many of the requirements of the Hazardous and Solid Waste Amendments of 1984.

These hazardous waste programs (referred to collectively as the "State Program") are codified under the New York State Environmental Conservation Law.

At all times relevant herein the United States Environmental Protection Agency was authorized to enforce the provisions of the State Program and the regulations promulgated thereunder, which regulations are set forth in Title 6 of the New York Codes, Rules and Regulations (the "NYCRR"). On July 20, 1993, the Complainant provided notice to the New York State Department of Environmental Conservation regarding this complaint pursuant to § 3008(a)(2) of the Act.

On September 29, 1993, the Complainant in this proceeding, the Director of the Air and Waste Management Division, United States Environmental Protection Agency, Region II ("EPA"), issued a Complaint, Compliance Order and Notice of Opportunity for Hearing to Brooklyn Union Gas Company ("Respondent"). The Complaint alleged in seven counts that Respondent had violated various provisions of the Act and the NYCRR.

The parties have discussed an amicable resolution of this proceeding and have agreed that the settlement of this matter is in the public interest and that finalization of this Consent Agreement without further litigation is the most appropriate way to resolve their dispute.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Respondent is a public utility, a New York corporation and a person, as that term is defined in 40 C.F.R. § 260.10 and 6 NYCRR Part 370.

2. Respondent's executive office is located at One MetroTech Center, Brooklyn, New York.

3. By notice dated August 18, 1980, Respondent informed EPA that it conducts activities as a generator of hazardous waste, as that term is defined in 40 C.F.R. § 261.3 and 6 NYCRR 371.1(d), at a facility owned and operated by it at 287 Maspeth Avenue, Brooklyn, New York (the "Greenpoint facility").

4. Respondent conducts maintenance operations at several other facilities owned and operated by it in Brooklyn, Queens, and Staten Island, New York (the "remote facilities"), including a facility located at 8302-8624 Ditmas Avenue, Brooklyn, New York, a facility located at 25 Willow Avenue, Staten Island, New York, a facility located at 7801 57th Avenue, Queens, New York, and a facility located at 77 6th Street, Brooklyn, New York.

5. The Greenpoint facility and the remote facilities are subject to the requirements of the Act, the State Program and the regulations promulgated under the State Program in 6 NYCRR.

6. On or about February 22, June 25, and June 28, 1993, duly designated representatives of EPA conducted inspections of and at several of Respondent's facilities pursuant to Section 3007 of the Act, 42 U.S.C. § 6927. Respondent cooperated fully in EPA's investigation by, among other things, providing a letter

dated March 18, 1993, responding to EPA's request for information regarding Respondent's waste management procedures at its facilities and, on August 10, 1993, providing a full and complete response and backup documentation to an Information Request letter issued by EPA to Respondent on or about June 29, 1993, pursuant to § 3007 of the Act, 42 U.S.C. § 6927.

7. On the basis of the information obtained through the above inspections and documents, Complainant determined that Respondent had violated the following provisions of the Act and the NYCRR: section 3010 of the Act and 6 NYCRR §373.3(a)(2) and (3) (failure to obtain an EPA identification number as a transporter of hazardous waste); 6 NYCRR §373.2(b)(1) (transport of hazardous waste without an accompanying manifest); sections 3005 and 3010 of the Act and 6 NYCRR §372.4(a)(1) (operating the Greenpoint facility as a hazardous waste storage facility without notice and a permit); and section 3010 of the Act and 6 NYCRR §372.2(a)(3) (failure to provide notice and to obtain EPA identification numbers for the remote facilities as generators of hazardous waste).

CONSENT AGREEMENT

Based on the foregoing, and in accordance with federal law and regulation the parties enter into this Consent Agreement for purposes of settling this proceeding, and consent and agree to the following terms;

1. The provisions of this Consent Agreement shall be binding upon the Respondent, its officers, agents, servants, authorized representatives, employees and successors.

2. For purposes of this Consent Agreement only, pursuant to 40 C.F.R. §22.18, the Respondent admits the jurisdictional allegations of the Complaint.

3. Pursuant to 40 C.F.R. §22.18, the Respondent neither admits nor denies the factual allegations contained in the Complaint concerning its alleged violations, nor the Findings of Facts and Conclusions of Law set forth above.

4. Respondents shall pay a civil penalty in the amount of \$57,750 in full and complete settlement of the violations alleged in the Complaint.

5. Respondent shall pay said \$57,750, by cashier's or certified check payable to the "Treasurer of the United States of America." The payment is due within thirty (30) days after the Regional Administrator signs the attached Consent Order (the "due date"). Respondent's check shall be mailed to the following address:

Regional Hearing Clerk
U.S. EPA, Region II
P.O. Box 360188M
Pittsburgh, PA 15251

The payment shall be identified as In the Matter of Brooklyn Union Gas Company, Docket Nos. II-RCRA-93-0214 (A - E).

Respondent shall send notice of the payment, including a copy of the check, to the following addresses:

Regional Hearing Clerk
U.S.E.P.A. - Region II
Room 437
26 Federal Plaza
New York, New York 10278

Richard J. Weisberg
U.S.E.P.A. - Region II
Office of Regional Counsel
26 Federal Plaza, Room 400
New York, New York 10278

Failure to pay the penalty in full, according to the above provisions, will result in referral of this matter to the United States Attorney for collection. Furthermore, if the payment is not received on or before its due date, interest will be assessed at the annual rate established by the Secretary of the Treasury, pursuant to 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of twenty dollars (\$20.00) per month will be assessed if payment is not received by the due date. A six percent (6%) per annum penalty will also be applied on any principal amount due but not paid within ninety (90) days of the due date.

6. This Consent Agreement is being entered into by the parties in full and complete settlement and resolution of all civil liabilities and claims that might have attached as a result of the allegations set forth by Complainant in the Complaint. Upon full payment of the penalty agreed to in paragraph 4 above, EPA shall not initiate or refer any further civil action or proceeding for penalties or other relief for the violations alleged in the Complaint.

7. This Consent Agreement does not constitute an admission of fact, liability or fault by the Respondent.

8. Nothing herein is intended to create any presumption of law or finding of fact for the benefit of any person other than Complainant, or a person or entity acting on behalf of Complainant.

9. Respondent has read this Consent Agreement and consents to its issuance and its terms, and to the issuance of the attached Consent Order (the "Order").

10. Respondent waives its right to request a hearing on the Complaint, this Agreement, or the Order; provided, however, Respondent reserves all rights in any future action involving, interpreting, or enforcing this Consent Agreement or the Order.

11. Respondent waives any right it may have pursuant to 40 C.F.R. §22.08 to be present during discussions with or to be served with and to reply to any memorandum or communication addressed to the Regional Administrator or the Deputy Regional Administrator where the purpose of such discussion, memorandum, or communication is to recommend that such official accept this Consent Agreement and issue the Order; provided, however, Respondent does not waive any right it may have under 40 C.F.R. §22.08 to any communication with the Regional Administrator or the Deputy Regional Administrator not involving the approval of this Consent Agreement or the Order.

12. Each signatory of this Consent Agreement certifies that he or she is fully authorized to enter into the above terms.

13. The parties shall bear their own costs.

RESPONDENT:

Brooklyn Union Gas Company

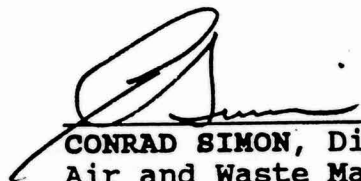
BY: Robert H. Preusser

NAME: Robert H. PREUSSER
(Please Print)

TITLE: Vice President

DATE: March 7, 1994

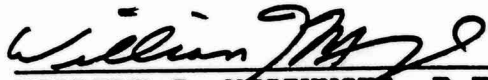
COMPLAINANT:


CONRAD SIMON, Director
Air and Waste Management Division
U.S.E.P.A. - Region II

DATE: 3/15/94

CONSENT ORDER

The Regional Administrator of EPA, Region II, concurs in the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved and issued as an order, effective immediately.


WILLIAM J. MUSZYNSKI, P.E.
Acting Regional Administrator
U.S. Environmental Protection
Agency - Region II
26 Federal Plaza
New York, New York 10278

DATE: 2/18/54